



April 5, 2004

Jennifer J. Johnson
Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments/Executive Secretary Section
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Advance Notice of Proposed Rulemaking on Alternative Privacy Notices

Dear Ms. Johnson and Mr. Feldman:

The Conference of State Bank Supervisors (CSBS)¹ is pleased to have the opportunity to comment on the joint advance notice of proposed rulemaking (ANPR) requesting comment on methods to improve the privacy notices financial institutions must provide to consumers under the Gramm-Leach-Bliley Act.

CSBS strongly supports the objectives expressed in the ANPR, which was jointly released by the Federal Reserve Board of Governors (Board), Commodities Futures Trading Commission, Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, and the Securities and Exchange Commission. We ask that you convey these comments to the other agencies not addressed in our letter as this proposal moves forward.

CSBS believes it is important to support the goals of materially reducing the regulatory burdens currently imposed on the financial institution industry. CSBS in its coordination role for our 54 state bank commissioner members and in our consulting role for the Federal

¹ CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,500 state chartered commercial and savings banks and over 400 state-licensed branches and agencies of foreign banks.

Financial Institution Examination Council State Liaison Committee², we have participated in banker and consumer outreach initiatives to discuss regulatory burden relief. Bankers have consistently stated their frustration with the privacy notices required by law, indicating that the current disclosure requirements create customer confusion and disclosure overkill. In this regard, we applaud this interagency effort to create optional, short-form privacy notices in order to reduce and simplify regulations that industry comments indicate are outdated, ineffective, or simply do not meet the requirements initially enacted by Congress.

The ANPR specifically requests information on whether differences between federal and state laws pose any special issues in developing a short-form privacy notice. We discussed this question with the CSBS Regulatory Committee³, which was unaware of any conflict that would be created in designing a short-form privacy notice. Four states currently have laws that require consumers to permit information sharing agreements between financial institutions and affiliates or third parties⁴. The state banking departments that require specific consumer permission agreements also did not believe the objectives of the ANPR would conflict with state law. As California has already developed and implemented a short-form privacy notice in its regulations, we have attached a potential example that the agencies can review in their deliberations on a proposed rule.

Conclusion

CSBS believes that cooperative efforts between state and Federal authorities to ensure that financial institutions fully understand compliance requirements, especially in regard to consumer disclosures, will have a greater impact than individual efforts at either the state or Federal level. We would welcome opportunities to work with the FDIC, the Board, or any of the other Federal agencies developing an optional short-form privacy notice to develop joint initiatives and guidance in this area. Thank you for your consideration and we invite you to call on us if we can provide additional information on any of the state initiatives noted in our letter.

Best Personal Regards,



Neil Milner
President and CEO

Attachment

² Members of the FFIEC include the Federal Deposit Insurance Corporation, the Board of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration. Congress requires FFIEC consultation with a State Liaison Committee, comprised of five state financial regulators, when developing policy.

³ The CSBS Regulatory Committee is chaired by Tennessee Banking Commissioner Kevin Lavender and is comprised of an additional 36 state bank commissioners and deputy commissioners across the country.

⁴ California, Vermont, New Mexico, and North Dakota have laws requiring business to obtain consumers' permission to share personal data. Other states are considering state privacy laws.

DEPARTMENT OF FINANCIAL INSTITUTIONS

111 PINE STREET, SUITE 1100
SAN FRANCISCO, CA 94111-5613
(415) 263-8555
<http://www.dfi.ca.gov>



March 30, 2004

Alan T. Cox
Vice President, Regulatory Affairs
Conference of State Bank Supervisors
1155 Connecticut Avenue, NW, Fifth Floor
Washington, DC 20036-4306

Dear Alan:

Further to our phone conversation this morning, I am enclosing relevant sections of the California Financial Information Privacy Act.

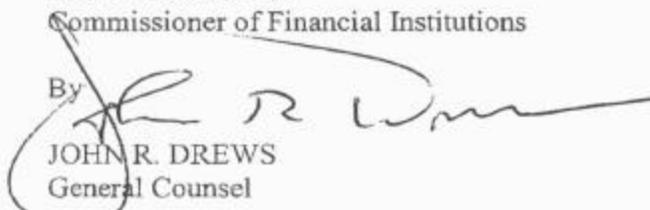
Under this Act, a financial institution may use one of two short forms to "opt-out" of allowing nonpublic personal information to be shared. In Financial Code section 4053(d), et seq., the institution may compile its own form or use the form printed in the text of the bill.

If you have any questions regarding the California forms, please let me know.

Very truly yours,

HOWARD GOULD
Commissioner of Financial Institutions

By


JOHN R. DREWS
General Counsel

JRD:lca
Enclosure

(c) Nothing in this division shall restrict or prohibit the sharing of nonpublic personal information between a financial institution and its wholly owned financial institution subsidiaries; among financial institutions that are each wholly owned by the same financial institution; among financial institutions that are wholly owned by the same holding company; or among the insurance and management entities of a single insurance holding company system consisting of one or more reciprocal insurance exchanges which has a single corporation or its wholly owned subsidiaries providing management services to the reciprocal insurance exchanges, provided that in each case all of the following requirements are met:

(1) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are regulated by the same functional regulator; provided, however, that for purposes of this subdivision, financial institutions regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, National Credit Union Administration, or a state regulator of depository institutions shall be deemed to be regulated by the same functional regulator; financial institutions regulated by the Securities and Exchange Commission, the United States Department of Labor, or a state securities regulator shall be deemed to be regulated by the same functional regulator; and insurers admitted in this state to transact insurance and licensed to write insurance policies shall be deemed to be in compliance with this paragraph.

(2) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are both principally engaged in the same line of business. For purposes of this subdivision, "same line of business" shall be one and only one of the following:

- (A) Insurance.
- (B) Banking.
- (C) Securities.

(3) The financial institution disclosing the nonpublic personal information and the financial institution receiving it share a common brand, excluding a brand consisting solely of a graphic element or symbol, within their trademark, service mark, or trade name, which is used to identify the source of the products and services provided.

A wholly owned subsidiary shall include a subsidiary wholly owned directly or wholly owned indirectly in a chain of wholly owned subsidiaries.

Nothing in this subdivision shall permit the disclosure by a financial institution of medical record information, as defined in subdivision (q) of Section 791.02 of the Insurance Code, except in compliance with the requirements of this division, including the requirements set forth in subdivisions (a) and (b).

(d)(1) A financial institution shall be conclusively presumed to have satisfied the notice requirements of subdivision (b) if it uses the form set forth in this subdivision. The form set forth in this subdivision or a form that complies with subparagraphs (A) to (I), inclusive, of this paragraph shall be sent by the financial institution to the consumer so that the consumer may make a decision and provide direction to the financial institution regarding the sharing of his or her nonpublic personal information. If a financial institution does not use the form set forth in this subdivision, the financial institution shall use a form that meets all of the following requirements:

(A) The form uses the same title ("IMPORTANT PRIVACY CHOICES FOR CONSUMERS") and the headers, if applicable, as follows: "Restrict Informa-

tion Sharing With Companies We Own Or Control (Affiliates)" and "Restrict Information Sharing With Other Companies We Do Business With To Provide Financial Products And Services."

(B) The titles and headers in the form are clearly and conspicuously displayed, and no text in the form is smaller than 10-point type.

(C) The form is a separate document, except as provided by subparagraph (D) of paragraph (2), and Sections 4054 and 4058.7.

(D) The choice or choices pursuant to subdivision (b) and Section 4054.6, if applicable, provided in the form are stated separately and may be selected by checking a box.

(E) The form is designed to call attention to the nature and significance of the information in the document.

(F) The form presents information in clear and concise sentences, paragraphs, and sections.

(G) The form uses short explanatory sentences (an average of 15-20 words) or bullet lists whenever possible.

(H) The form avoids multiple negatives, legal terminology, and highly technical terminology whenever possible.

(I) The form avoids explanations that are imprecise and readily subject to different interpretations.

(J) The form achieves a minimum Flesch reading ease score of 50, as defined in Section 2689.4(a)(7) of Title 10 of the California Code of Regulations, in effect on March 24, 2003, except that the information in the form included to comply with subparagraph (A) shall not be included in the calculation of the Flesch reading ease score, and the information used to describe the choice or choices pursuant to subparagraph (D) shall score no lower than the information describing the comparable choice or choices set forth in the form in this subdivision.

(K) The form provides wide margins, ample line spacing and uses boldface or italics for key words.

(L) The form is not more than one page.

(2)(A) None of the instructional items appearing in brackets in the form set forth in this subdivision shall appear in the form provided to the consumer, as those items are for explanation purposes only. If a financial institution does not disclose or share nonpublic personal information as described in a header of the form, the financial institution may omit the applicable header or headers, and the accompanying information and box, in the form it provides pursuant to this subdivision. The form with those omissions shall be conclusively presumed to satisfy the notice requirements of this subdivision.

Important Privacy Choices for Consumers

You have the right to control whether we share some of your personal information. Please read the following information carefully before you make your choices below.

Your Rights

You have the following rights to restrict the sharing of personal and financial information with our affiliates (companies we own or control) and outside companies that we do business with. Nothing in this form prohibits the sharing of information necessary for us to follow the law, as permitted by law, or to give you the best service on your accounts with us. This includes sending you information about some other products or services.

Your Choices

Restrict Information Sharing With Companies We Own or Control (Affiliates): Unless you say "No," we may share personal and financial information about you with our affiliated companies.

NO, please do not share personal and financial information with your affiliated companies.

Restrict Information Sharing With Other Companies We Do Business With To Provide Financial Products And Services: Unless you say "No," we may share personal and financial information about you with outside companies we contract with to provide financial products and services to you.

NO, please do not share personal and financial information with outside companies you contract with to provide financial products and services

Time Sensitive Reply

You may make your privacy choice(s) at any time Your choice(s) marked here will remain unless you state otherwise. However, if we do not hear from you we may share some of your information with affiliated companies and other companies with whom we have contracts to provide products and services.

Name: _____

Account or Policy Number(s): _____ [to be filled in by consumer]

Signature: _____

To exercise your choices do [one of] the following:

- (1) Fill out, sign and send back this form to us using the envelope provided (you may want to make a copy for your records); [#] is mandatory*
- [(2) Call this toll-free number (800) xxx-xxxx or (xxx) xxx-xxxx; [optional]*
- [(3) Reply electronically by contacting us through the following Internet option: xxxxx.com] [optional]*

(B) If a financial institution uses a form other than that set forth in this subdivision, the financial institution may submit that form to its functional regulator for approval, and for forms filed with the Office of Privacy Protection prior to July 1, 2007, that approval shall constitute a rebuttable presumption that the form complies with this section.

(C) A financial institution shall not be in violation of this subdivision solely because it includes in the form one or more brief examples or explanations of the purpose or purposes, or context, within which information will be shared, as long as those examples meet the clarity and readability standards set forth in paragraph (1).

(D) The outside of the envelope in which the form is sent to the consumer shall clearly state in 16-point boldface type "IMPORTANT PRIVACY CHOICES," except that a financial institution sending the form to a consumer in the same envelope as a bill, account statement, or application requested by the consumer does not have to include the wording "IMPORTANT PRIVACY CHOICES" on that envelope. The form shall be sent in any of the following ways: